



General Assembly

January Session, 2001

***Amendment***

LCO No. 7510

Offered by:

SEN. GUGLIELMO, 35<sup>th</sup> Dist.

To: Subst. Senate Bill No. 477

File No. 234

Cal. No. 204

***"AN ACT CONCERNING INSURANCE SETTLEMENTS FOR TOTAL LOSS VEHICLES."***

1 In line 1, before "Section" insert "Section 1."

2 After line 23, insert the following:

3 "Sec. 2. Section 36a-785 of the general statutes is repealed and the  
4 following is substituted in lieu thereof:

5 (a) When the retail buyer is in default in the payment of any sum  
6 due under the retail installment contract or installment loan contract,  
7 or in the performance of any other condition which such contract  
8 requires [him] the retail buyer to perform, or in the performance of any  
9 promise, the breach of which is by such contract expressly made a  
10 ground for the retaking of the goods, the holder of the contract may  
11 retake possession thereof. Unless the goods can be retaken without  
12 breach of the peace, it shall be retaken by legal process, but nothing  
13 herein contained shall be construed to authorize a violation of the  
14 criminal law. In the case of repossession of any motor vehicle without

15 the knowledge of the retail buyer, the local police department shall be  
16 notified of such repossession immediately thereafter. In the absence of  
17 a local police department or if the local police department cannot be  
18 reached for notification, the state police shall be promptly notified of  
19 such repossession.

20 (b) Not less than ten days prior to the retaking, the holder of such  
21 contract, if [he] the holder so desires, may serve upon the retail buyer,  
22 personally or by registered or certified mail, a notice of intention to  
23 retake the goods on account of the buyer's default. The notice shall  
24 state the default and the period at the end of which such goods will be  
25 retaken, and shall briefly and clearly state what the retail buyer's rights  
26 under this subsection will be in case such goods are retaken. If the  
27 notice is so served and the buyer does not perform the conditions and  
28 provisions as to which [he] the retail buyer is in default before the day  
29 set for retaking, the holder of the contract may retake said goods and  
30 hold such subject to the provisions of subsections (d), (e), (f), (g) and  
31 (h) of this section regarding resale, but without any right of  
32 redemption.

33 (c) If the holder of such contract does not give the notice of intention  
34 to retake, described in subsection (b) of this section, [he] the holder  
35 shall retain such goods for fifteen days after the retaking within the  
36 state in which they were located when retaken. During such period the  
37 retail buyer, upon payment or tender of the unaccelerated amount due  
38 under such contract at the time of retaking and interest, or upon  
39 performance or tender of performance of such other condition as may  
40 be named in such contract as precedent to the retail buyer's continued  
41 possession of such goods, or upon performance or tender of  
42 performance of any other promise for the breach of which such goods  
43 were retaken, and upon payment of the actual and reasonable  
44 expenses of any retaking and storing, may redeem such goods and  
45 become entitled to take possession of the same and to continue in the  
46 performance of such contract as if no default had occurred. The holder  
47 of such contract shall within three days of the retaking furnish or mail,  
48 by registered or certified mail, to the last known address of the buyer a

49 written statement of the unaccelerated sum due under such contract  
50 and the actual and reasonable expense of any retaking and storing. For  
51 failure to furnish or mail such statement as required by this section, the  
52 holder of the contract shall forfeit the right to claim payment for the  
53 actual and reasonable expenses of retaking and storage, and also shall  
54 be liable for the actual damages suffered because of such failure. If  
55 such goods are perishable so that retention for fifteen days as herein  
56 prescribed would result in their destruction or substantial injury, the  
57 provisions of this subsection shall not apply and the holder of the  
58 contract may resell the goods immediately upon such retaking.

59 (d) If the retail buyer does not redeem such goods within fifteen  
60 days after the holder of the contract has retaken possession, the holder  
61 of the contract shall sell such goods at public or private sale which sale  
62 may be held not less than fifteen days and shall be held not more than  
63 one hundred eighty days after the retaking. When the holder of the  
64 contract retakes possession by legal process, and an answer is  
65 interposed, the holder of the contract may, at [his] the holder's election,  
66 hold such retaken goods for a period not to exceed thirty days after the  
67 entry of final judgment by a court of competent jurisdiction entitling  
68 the holder of the contract to possession of such goods before holding  
69 such resale. The holder of the contract shall give the retail buyer not  
70 less than ten days' written notice of the time and place of any public  
71 sale, or the time after which any private sale or other intended  
72 disposition is to be made, either personally or by registered mail or by  
73 certified mail receipted for on mailing directed to the retail buyer at  
74 [his] the retail buyer's last-known place of business or residence. The  
75 holder of the contract may bid for such goods at any public sale. The  
76 proceeds of the resale shall be considered to be [either] the amount  
77 paid for such goods at such sale, [or the fair cash retail market value of  
78 such goods at the time of repossession, whichever is the greater,]  
79 except as otherwise provided in subsection (g) of this section.

80 (e) Proceeds of the resale shall be applied (1) to the payment of the  
81 actual and reasonable expenses thereof, (2) to the payment of the  
82 actual and reasonable expenses of any retaking and storing of said

83 goods, (3) to the satisfaction of the balance due under the contract.  
84 Within thirty days of the resale, the holder of the contract shall give the  
85 retail buyer a written statement itemizing the disposition of the  
86 proceeds. Any sum remaining after the satisfaction of such claims shall  
87 be paid to the retail buyer.

88 (f) Notwithstanding that the proceeds of the resale are not sufficient  
89 to defray the actual and reasonable expenses thereof, and also such  
90 actual and reasonable expenses of any retaking and storing of such  
91 goods and the balance due under the contract, the holder of the  
92 contract may not recover the deficiency from the retail buyer or any  
93 surety or guarantor for [him] the retail buyer, or from any one who has  
94 succeeded to the obligations of such retail buyer, except as provided in  
95 subsection (g) of this section.

96 (g) If the goods retaken consist of a motor vehicle the aggregate cash  
97 price of which was more than two thousand dollars, the prima facie  
98 fair market value of such motor vehicle shall be [calculated by adding  
99 together the average trade-in value for that motor vehicle and the  
100 average retail value for that motor vehicle and dividing that sum by  
101 two. Such average trade-in value and average retail value shall be  
102 determined by the values as stated in the National Automobile Dealers  
103 Association Used Car Guide, Eastern Edition, as of the date of  
104 repossession] the amount paid for such motor vehicle at public sale. If  
105 the goods retaken consist of a boat the aggregate cash price of which  
106 was more than two thousand dollars, the prima facie fair market value  
107 of such boat shall be calculated by adding together the average trade-  
108 in value for that boat and the average retail value for that boat and  
109 dividing that sum by two. Such average trade-in value and average  
110 retail value shall be determined by the values as stated in the National  
111 Automobile Dealers Association Appraisal Guide for Boats, Eastern  
112 Edition, as of the date of repossession. In the event that the value of  
113 such motor vehicle or boat is not stated in such publication, then the  
114 fair market value at retail minus the reasonable costs of resale shall be  
115 determined by the court. The prima facie evidence of fair market value  
116 of such motor vehicle or boat so determined may be rebutted only by

117 direct in-court testimony. If such value of the motor vehicle or boat is  
118 less than the balance due under the contract, plus the actual and  
119 reasonable expenses of the retaking of possession, the holder of the  
120 contract may recover from the retail buyer, or from anyone who has  
121 succeeded to his or her obligations, as a deficiency, the amount by  
122 which such liability exceeds such fair market value, as defined in this  
123 subsection. If the actual resale price received by the holder exceeds  
124 such fair market value, as defined in this subsection, the actual resale  
125 price shall govern.

126 (h) After the holder retakes possession as provided in subsection (a)  
127 of this section, or if the holder obtains a prejudgment remedy against  
128 the goods under chapter 903a, the retail buyer or anyone who has  
129 succeeded to his or her obligations shall not be liable for any balance  
130 due, except to the extent permitted by subsection (g) of this section.  
131 The holder may seek a monetary judgment on the contract against the  
132 buyer unless the goods have been repossessed, with or without judicial  
133 process. Goods purchased under the contract shall not be executed  
134 upon to satisfy such judgment. When such judgment becomes final,  
135 the holder's security interest in the goods shall be extinguished. If the  
136 contract covers a retail sale of a motor vehicle required to be registered,  
137 the holder shall comply with section 14-188.

138 (i) If the holder of the contract fails to comply with the provisions of  
139 subsections (c), (d), (e), (f), (g) and (h) of this section, after retaking the  
140 goods, the retail buyer may recover from the holder of the contract  
141 [his] the retail buyer's actual damages, if any, and in no event less than  
142 one-fourth of the sum of all payments which have been made under  
143 the contract.

144 (j) No act or agreement of the retail buyer before or at the time of the  
145 making of a retail installment contract or installment loan contract nor  
146 any agreement or statement by the retail buyer in such contract shall  
147 constitute a valid waiver of the provisions of subsections (c), (d), (e),  
148 (f), (g), (h) and (i) of this section.

149       (k) After the delivery of the goods to the retail buyer and prior to  
150       any retaking thereof by the holder of the contract, the risk of injury and  
151       loss shall rest upon the retail buyer."